

PeerStreet/1567 56th St - 1567 NY LLC/Braun v Chartwell/Rule 12(b) Motion to Dismiss - Statement of Material Facts

CHARTWELL LAW

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**IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK**

SHLOMO BRAUN,)	Case No. 1:23-cv-08887 - DEH
)	
Plaintiff,)	
)	STATEMENT OF MATERIAL
v.)	FACTS IN SUPPORT OF MOTION
)	TO DISMISS COMPLAINT, AND/OR
THE CHARTWELL LAW OFFICES, LLP,)	FOR SUMMARY JUDGMENT
)	PURSUANT TO FED.R.CIV.P.
Defendant.)	RULES 12(b)(1), (b)(6) AND 56,
)	AND LOCAL CIVIL RULE 56.1

Pursuant to Local Civil Rule 56.1, the following material facts are stated by

Defendant’s counsel, upon information and belief, to be undisputed.

1. Plaintiff, Shlomo Braun (“Braun”), is an adult individual and resident of the State of New York.

2. Defendant, The Chartwell Law Offices, LLP (d/b/a Chartwell Law) (“Chartwell”), is a Pennsylvania limited liability partnership.

3. Braun commenced the above-captioned matter by filing a complaint against Chartwell with the Supreme Court of the State of New York, New York County, on August 31, 2023, sounding under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 -1692p (the “FDCPA” and “FDCPA Complaint”), which was docketed at Index No. 158686/2023 (the “FDCPA Action”). On September 28, 2023, Chartwell filed a Notice of Removal of the FDCPA

Action to the United States District Court for the Eastern District of New York, which was docketed at Civil Action No. 1:23-cv-07241-OEM-TAM. On October 10, 2023, the Honorable Orelia E. Merchant entered a Summary Remand Order remanding the FDCPA Action to the State Court, holding that it should have been filed in the Southern District. Chartwell filed a Notice of Removal to this Court the same day, thereby initiating the above-captioned matter.

4. The FDCPA Complaint alleged three violations of the FDCPA by Chartwell: (a) failure to provide a thirty-day debt validation notice allegedly required under 15 U.S.C. § 1692g(a); (b) violation of 15 U.S.C. § 1692g(b) in deliberately omitting the validation notice and/or continuing to attempt to collect the debt after receiving Braun’s notice that the debts were disputed; and (c) violation of 15 U.S.C. § 1692e(a)(2) in misrepresenting the legal status of the debts.

5. PS Funding, Inc. (“PS Funding”), is a Delaware corporation.

6. On June 26, 2023, PS Funding a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware, which was docketed at Case No. 23-10815-LSS, and is continuing in the possession and operation of its assets as a debtor-in-possession. As a result of proceedings in the PS Funding Bankruptcy, portions of the RICO Action have been stayed, and the Foreclosures have been stayed in their entirety for a period of 90 days starting on October 16, 2023.

7. Pre-bankruptcy, PS Funding, through Chartwell as its counsel, filed two (2) separate complaints in mortgage foreclosure against two (2) separate parcels of income-producing real property, then owned as a matter of public record by a New York limited liability company identified as 1567 56 NY LLC (“1567 LLC”).

8. The first foreclosure complaint was filed in the Supreme Court of New York, Kings County (the “State Court”), on February 15, 2021 at Index No. 503948/2021 (the “First Foreclosure”).

9. The First Foreclosure involved real property located at 1569 56th St., Brooklyn, NY 11219 (the “1569 Property”), and a mortgage thereon in favor of Rosa Funding, LLC (“Rosa Funding”) from 1567 LLC, which was duly recorded in the New York Department of Finance, Office of the City Register on September 23, 2019 at CRFN 2019000306604 (the “1569 Mortgage”), assigned to PS Funding by Assignment of Mortgage dated August 27, 2019, recorded on September 23, 2019 at CRFN 2019000306605 (the “1569 Assignment”).

10. The second foreclosure complaint was filed in the State Court on February 15, 2021 at Index No. 503623/2021 (the “Second Foreclosure”).

11. The Second Foreclosure involved real property located at 1567 56th St., Brooklyn, NY 11219 (the “1567 Property”), and a mortgage thereon from 1567 LLC to Rosa Funding, which was duly recorded on September 23, 2019 at CRFN 2019 000306592 (the “1567 Mortgage”), and assigned to PS Funding, Inc. by Assignment of Mortgage dated August 27, 2019, which was recorded on September 23, 2019 at CRFN 2019 000306593 (the “1567 Assignment”).

12. The promissory note secured by the 1569 Mortgage (the “1569 Note”) and the promissory note secured by the 1567 Mortgage (the “1567 Note”) (collectively, the “Notes”), were not executed by Braun, but by 1567 LLC.

13. The 1569 Mortgage and 1567 Mortgage (collectively, the “Mortgages”), were not executed by Braun, but by 1567 LLC, as part of two (2) separate commercial transactions.

14. Braun is not obligated to PS Funding under the terms of the Notes and Mortgages,

and no demand for payment of same has ever been made of him.

15. The Mortgages were executed by a limited liability company in connection with strictly commercial loans, which were not made for personal, family or household purposes.

16. More than two (2) years have elapsed since the commencement of the First Foreclosure and Second Foreclosure (collectively, the “Foreclosures”).

17. Chartwell Law had no involvement with Braun, the 1567 Property or the 1569 Property (collectively, the “Properties”), other than in its role as counsel for the foreclosing plaintiff in the Foreclosure Actions, PS Funding.

18. On August 17, 2022, a multi-count complaint was filed in the United States District Court for the Eastern District of New York, in an action styled as *1567 56th Street, LLC and Shlomo Braun v. Arthur Spitzer, Josh Weinfeld, Isidore Bleier, 1567 56 NY LLC, Dekel Abstract LLC, Abraham Teitelbaum, Rosa Funding LLC, PS Funding, Inc., and Jehuda Weisz*, U.S. E.D.N.Y. Civil Action, No. 22-4873-CV (the “RICO Complaint”).

19. The RICO Complaint alleged diversity jurisdiction as well as jurisdiction under the so-called “RICO Statute”, 18 U.S.C. § 1694, and that Braun and his limited liability companies, 1567 56th Street, LLC and 1569 56th Street, LLC had been defrauded out of title to the Properties by Arthur Spitzer, acting in concert with certain other defendants, including PS Funding.

20. Chartwell is not a party to the RICO Action.

21. Identical issues of fact and law concerning the validity of transfers of the Properties involved in the Foreclosure Actions have been raised in the RICO Action and the FDCPA Complaint.

22. The RICO Action is a prior pending action, the determination of which would be

dispositive of Braun's putative FDCPA-based claims against Chartwell.

23. The FDCPA Complaint was filed more than two (2) years after the commencement of the Foreclosures, and more than one (1) year after the commencement of the RICO Action.

Dated: October 20, 2023

Respectfully submitted,

CHARTWELL LAW

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